SBCivil Writ Petition No.4315/2003

Mohd. Ateeque
Vs.
State of Rajasthan & Ors.

Date of Order :: 3rd October, 2006

HON'BLE MR.JUSTICE GOVIND MATHUR

Mr. H.Dutt, for the petitioner.
Mr. B.L.Tiwari, Dy.Govt.Advocate.

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The petitioner while in service made a permanent withdrawal of a sum of Rs.15,000/- from General Provident Fund on 26.4.1990 but instead of deducting this amount from his Provident Fund account it was by an error added to that. This error came into knowledge of the respondents in the year 2001 i.e. after a lapse of about four years from the date of retirement of the petitioner from service i.e. 31.10.1997. The respondents, therefore, while determining the arrears required to be paid to the petitioner as a retrospective revision of pay scales ordered for recovery of the amount aforesaid with interest. An order accordingly was passed on 18.5.2001 to recover a sum of Rs.99,483/- from the petitioner's pension. By an another communication dated 3.3.2003 the respondents clarified that at the time of retirement a sum in a tune of Rs.27,051/- was paid in excess that is to be recovered with compound interest @ 18% per annum. Being aggrieved by the same the

petitioner by this petition for writ approached this Court under Article 226 of the Constitution of India seeking a direction for the respondents not to effect the recovery in the terms stated above.

The contention of the petitioner is that in adding a sum of Rs.15,000/- in his Provident Fund account there was no error on his part as the Provident Fund account is required to be maintained by the Provident Fund Department, as such he cannot be penalised for the error committed by others.

In reply to the writ petition the respondents reiterated that the amount of permanent withdrawal made by the petitioner on 26.4.1990 was erroneously added in Provident Fund account of the petitioner, therefore, the entire amount deserves to be recovered from the petitioner with interest.

Heard counsel for the parties.

It is not in dispute that a sum of Rs.15,000/- was erroneously added by the respondents in Provident Fund account of the petitioner in the year 1990. For such error there is no responsibility or liability of the petitioner. Whatever error committed that was by the respondents. The respondents on part of their error want to recover the amount erroneously added in Provident Fund account of the petitioner with a penal

interest @ 18% per annum. The petitioner is certainly liable to pay the amount which was erroneously added in his Provident Fund account but he cannot be subjected for payment of compound interest @ 18% per annum. The petitioner was not at all concern in adding the sum of Rs.15,000/- in his Provident Fund account. It was admittedly an error on part of the respondents and for that the petitioner cannot be subjected to pay a penal interest. The respondents should have acted cautiously and if an error was committed by them then that should have been rectified at earliest. The respondents came to knew about the error committed by them after a lapse of about 11 years and for that I do not find any just and valid reason to penalise the petitioner by subjecting recovery of the amount concern with interest, otherwise shall be highly arbitrary.

In view of whatever discussed above, this petition for writ is allowed. The recovery sought to be made by the respondents from the petitioner under the order dated 18.5.2001 passed by the Deputy Director, State Insurance-cum-Provident Fund Department, Jodhpur clarified under the communication dated 3.3.2003 is declared illegal. The respondents are restrained from effecting the recovery from pension of the petitioner or from Provident Fund account of the petitioner as referred in the orders impugned. However, it is made clear that the

respondents are at liberty to recover a sum of Rs.15,000/-, however, it is stated by counsel for the petitioner that a sum of more than Rs.48,000/- is already recovered by the respondents in pursuant to the impugned orders, therefore, it is ordered that whatever amount already recovered shall be refunded to the petitioner by deducting the sum of Rs.15,000/-. The refund in the terms above is to be made within a period of four months from today.

No order to costs.

(GOVIND MATHUR),J.

kkm/ps.